

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SOILO AVILA,

Plaintiff,

v.

CASE NO. 10-CV-00221 WJ/CG

YOUNG PECAN, INC.

Defendant(s),

FIRST AMENDED COMPLAINT

COMES NOW the Plaintiff, Soilo Avila, by and through his attorney of record, Carrillo Law, P.C., (Raul A. Carrillo) and for his Amended Complaint states:

1. Soilo Avila is a citizen of Dona Ana County, New Mexico, currently living in Las Cruces.
2. The Young Pecan Company is located in Dona Ana County, New Mexico.
3. The actions giving rise to this Complaint arose in Dona Ana County, New Mexico.
4. This Court has jurisdiction and venue is proper.
5. Soilo Avila was, until November 19, 2009, an employee of the Young Pecan Company.
6. His position was Production Laborer.
7. On November 19, 2009, Soilo Avila was involuntarily terminated from his position with the Young Pecan Company by telephone for not reporting he was sick on November 12 and November 13, 2009.

8. Prior to his termination, Soilo Avila was absent from work; subsequently hospitalized for a medical illness, and under a doctor's care known to Young Pecan Company, from the end of his shift on October 30, 2009 until November 16, 2009.
9. Soilo Avila was involuntarily terminated on 11/19/2009 by telephone.
10. At the time of his termination, Soilo Avila's medical leave fell under the auspices of the Family and Medical Leave Act (FMLA), as amended 29 USC §2601, et. seq.

COUNT I. VIOLATION OF EMPLOYMENT CONTRACT

11. Soilo Avila incorporates the preceding paragraphs, 1-9, as if fully restated herein.
12. At the time Soilo Avila was terminated, the Young Pecan Company materially breached the employment contract that governed its employment relationship with Soilo Avila.
13. These breaches have caused damage to Mr. Avila in the form of lost wages and insurance benefits.
14. Soilo Avila seeks damages for these breaches of contract in an amount exceeding the jurisdictional limits of the court.

COUNT II. VIOLATION OF THE FAMILY AND MEDICAL LEAVE ACT

15. Soilo Avila incorporates the preceding paragraphs, 1-13, as if fully restated herein.
16. Young Pecan interfered with Soilo Avila's right to Leave as defined by the 29 USC § 2912 and Restoration as defined by 29 U.S.C. § 2614(a) when it failed to

- reinstate him to his previously-held position upon his medical release on November 16, 2009 and subsequently terminated him on November 19, 2009.
17. Soilo Avila was not provided notice of his eligibility for Family and Medical Leave as defined by 29 C.F.R. § 825.300(b)(1).
18. Soilo Avila was not provide notice of his rights and responsibilities under the Family and Medical Leave Act as defined by the 29 C.F.R. § 825.300(c)(1).
19. The reason given for his termination was failure to report that he was sick on November 12 and 13, 2009.
20. In failing to reinstate and then terminating Soilo Avila's employment while he was on leave that qualified for job-protected leave under the Family and Medical Leave Act as defined by 29 USC § 2912, the Young Pecan Company engaged in a prohibited act as defined by 29 USC § 2915.
21. Soilo Avila seeks damages for these violations of the FMLA in an amount exceeding the jurisdictional limits of the court including monetary damages, interest, liquidated damages, attorney's fees, costs, post and prejudgment interest, reinstatement, and all other allowable damages as defined by 29 USC § 2617.

WHEREFORE, Soilo Avila asks that the Court enter its judgment against the Young Pecan Company in an amount including his lost wages, lost insurance, liquidated damages, attorneys fees, costs, post and prejudgment interest, and all other relief as may be just and proper.

Respectfully submitted,

CARRILLO LAW FIRM, P.C.

By: 

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